COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No.450 of 2001
(Old No. 324 of 2000)

1. The Commissioner of Income Tax, Meerut.
2. A.C.I.T., Special Circle, Dehradun

..... Appellants

Versus

Saipem SPA as agent of Mr. Silvestri Fernando,
Arthur Anderson & Co., Bombay

..... Respondent

Dated: December 13, 2005

Mr. S.K. Posti, Advocate for the appellants.

Coram: Hon. P.C. Verma, J.
Hon. J.C.S. Rawat, J.

This appeal is against the order dated 22.03.2000, passed by the Income Tax Appellate Tribunal, (Delhi Bench 'SMC' New Delhi) in ITA No.4574(Del) of 1993. The dispute relates to the Assessment Year 1990-91.

2. The substantial questions of law raised in the appeal are as follows:

> "Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was legally justified in holding the free boarding and lodging facilities provided by the employer on board the rig in high seas cannot be construed to be perquisite?"

> "Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was legally justified in holding that interest under Section 234-B of the I.T. Act cannot be charged since the entire income of the assessee was subject to T.D.S. whereas this

interest is chargeable on assessed tax as defined by Explanation I below Section 234-B"?

3. In the case of *Commissioner of Income Tax and another Vs. Sedco Forex International Drilling Co. Ltd. and connected cases reported in (2003) 264 ITR 320,* a Division Bench of this Court has held that the free boarding facility provided by the employer on the rig was not a perquisite under Section 17 (2)(iii) and that its value cannot be added to the income of the assessee. It has also been held that the imposition of interest under Section 234-B was not justified without hearing and without reasons.

4. Following the above-mentioned judgment of a Division Bench of this Court, we dismiss the appeal. Both the questions are answered against the appellants and in favour of the assessee.

(J.C.S. Rawat, J.) **(P.C. Verma, J.)**

Rajeev Dang